

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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KIMBERLY SCHIAVONE, an individual,

Plaintiff,

-against-

BRIAN GESTRING, MICHAEL C. GREEN,  
KAREN DAVIS, MARK BONACQUIST,  
STATE OF NEW YORK, JOHN DOE # 1,  
JOHN DOE #2, JOHN DOE #3, JOHN DOE #4,  
JANE ROE #1, JANE ROE #2, JANE ROE #3,  
and JANE ROE # 4,

Defendants.

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**COMPLAINT WITH  
DEMAND FOR JURY  
TRIAL**

Civil Case No.:

1:18-cv-1453 (LEK/CFH)

Plaintiff Kimberly Schiavone, by and through her attorneys, Bailey, Johnson & Peck, P.C., as and for her Complaint complaining about Defendants, jointly and severally, alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiff Kimberly Schiavone is an employee of the State of New York, Division of Criminal Justice Services (“DCJS”), an executive department agency located in Albany, New York. This case concerns Brian Gestring, Michael C. Green, Karen Davis, Mark Bonacquist, the State of New York, and John Doe# 1 – 4 and Jane Doe# 1 – 4 (hereinafter referred to collectively as “Defendants”) unlawful retaliation against Plaintiff Kimberly Schiavone (“Plaintiff”) for her complaints and testimony detailing the systemic sexual harassment, age discrimination, gender discrimination, racism, and

workplace violence that occurred, and was permitted to continue, by executive management officials within DCJS.

2. This is a civil action in which Plaintiff is seeking damages arising out of Defendants' violations, under color of state law, of Plaintiff's rights, privileges and immunities secured by, *inter alia*, the First Amendment of the United States Constitution, the Fourteenth Amendment of the United States Constitution, the Civil Rights Act of 1871, 42 U.S.C § 1983, 29 U.S.C § 623(d) and the Constitution and laws of the State of New York.

3. Plaintiff also seeks a remedy for violations of the laws of the State of New York based on the supplemental jurisdiction of this Court pursuant to 28 U.S.C § 1367, seeking relief for damages that Plaintiff has suffered as a result of being discriminated and retaliated against by Defendants.

4. Defendants collectively engaged in a pattern and practice of retaliation against Plaintiff, acting in coordination with one another and, upon information and belief, Defendants John Does and Jane Roes to be named, in order to deprive Plaintiff of her most fundamental liberties, and failed to prevent subsequent unconstitutional acts, and acts violative of State and Federal law against Plaintiff.

#### **THE PARTIES**

5. Plaintiff Kimberly Schiavone is an adult female over the age of forty (40). She is a citizen of the United States of America who currently resides in the Northern District of New York.

6. At all times relevant, Plaintiff was an “Employee” of the DCJS and the DCJS was an “Employer” of the Plaintiff within the meaning of 42 USC §§ 2000e, et seq. and the Human Rights Law of the State of New York.

7. During Plaintiff’s twenty-two (22) years of public service, and in particular, from 1996 until August 2017, Plaintiff had an unblemished employment record.

8. Between June 2006 and December 13, 2017, Plaintiff held the position of Forensic Services Program Manager within the DCJS Office of Forensic Services (OFS).

9. Defendant Brian Gestring (hereinafter “Defendant Gestring”), sued herein individually, is a resident of the State of New York.

10. Between July 2012 and December 13, 2017, Defendant Gestring was the Director of OFS and Plaintiff’s immediate supervisor.

11. Defendant Michael C. Green (hereinafter “Defendant Green”), sued herein individually, is a resident of the State of New York.

12. At all times herein relevant, Defendant Green was the Acting Commissioner<sup>1</sup> of DCJS, serving in the title of Executive Deputy Commissioner of DCJS.

13. As Acting Commissioner of DCJS, Defendant Green had the power to make personnel decisions regarding Plaintiff’s employment.

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<sup>1</sup> For all intents and purposes, Michael C. Green serves and functions as the DCJS Commissioner. However, Defendant Green, despite having been first appointed in 2012, has never been confirmed by the NYS State Senate and, thus, does not technically hold the statutorily designated position of DCJS’s Commissioner. He is in the Executive Deputy Commissioner line.

14. As Acting Commissioner of DCJS, Defendant Green was ultimately responsible for the supervision and continued employment of Defendant Brian Gestring.

15. Defendant Karen Davis (hereinafter “Defendant Davis”), sued herein individually, is a resident of the State of New York.

16. At all times herein relevant, Defendant Davis was the Director of Human Resources for DCJS.

17. Defendant Mark Bonacquist (hereinafter “Defendant Bonacquist”), sued herein individually, is a resident of the State of New York.

18. At all times herein relevant, Defendant Bonacquist was First Deputy Commissioner for DCJS.

19. Defendant, State of New York, is a state organized and maintained pursuant to the New York State Constitution with its principal office located at the State Capital, Albany, New York.

20. Defendants John Does #1-4 and Jane Roes #1-4 are individuals who are residents of the State of New York and employees of the State of New York, including employees and/or supervisors at DCJS, the Governor’s Office, the Office of the New York State Inspector General’s Office, and other executive branch employees who participated in the retaliatory actions against Plaintiff, but whose specific identities are currently unknown. They are sued herein individually, and their names will be substituted at a later time.

21. At all times herein relevant, Defendants John Does and Jane Roes were employees of the State of New York and were involved in Plaintiff’s wrongful adverse

employment action and/or the subsequent conspiracy to fail to rectify that adverse employment action.

22. Defendants are named in both their individual and official capacities.

### **JURISDICTION AND VENUE**

23. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiff's New York State law claims under 28 U.S.C. § 1367.

24. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district and the Plaintiff and a majority of the Defendants reside in the Northern District of New York. Pursuant to 28 U.S.C. § 1391(b), an action may be brought where any Defendant resides if all Defendants are residents of the State wherein the district is located, as here. The retaliatory and tortious conduct also occurred in the jurisdiction of the Northern District of New York.

### **CONDITIONS PRECEDENT**

25. On or around June 5, 2018, Plaintiff timely submitted a charge of discrimination on the basis of, *inter alia*, sex and age to the U.S. Equal Employment Opportunity Commission (EEOC) of the State of New York. A copy of this charge of discrimination is attached, marked **Exhibit "A"**, and incorporated by reference.

26. The Equal Employment Opportunity Commission (EEOC) assumed jurisdiction over Plaintiff's charge pursuant to Title 42 of the United States Code, section

2000e and notice of the charge was served on the DCJS pursuant to statutory requirements.

27. On October 25, 2018, Plaintiff received a “notice of right to sue within 90 days” from the EEOC. A copy of this notice is attached, marked **Exhibit “B”**, and incorporated by reference.

### **FACTUAL ALLEGATIONS**

28. Plaintiff commenced employment at DCJS on July 5, 2005 as a Project Coordinator.

29. In June 2006, Plaintiff was asked by then DCJS Commissioner Chauncey Parker, and First Deputy Commissioner Martin Cirincione, to manage the implementation of the June 23, 2006 legislative DNA expansion.

30. In June 2006, Plaintiff’s title changed from Project Coordinator to Forensic Services Program Manager.

31. Plaintiff is a female and over the age of forty (40) and as such is a member of a protected class.

32. Plaintiff is a civil service employee and a member of a union. At all times relevant to the suit, Plaintiff was acting in the scope of her employment for DCJS.

33. Upon information and belief, DCJS is aware of, and has been since on or about the year 2012 through reports of employees, that there is disparate treatment, sexual harassment, ageism, racism, as well as a hostile work environment at DCJS.



34. DCJS is required to and failed to provide fair and equal treatment in terms of employment including discipline and sanctions for misconduct of employees without regard to gender, race, age, or other classification.

35. Commencing in the year 2012, and continuing on various dates up to the present, Plaintiff has suffered a series of discriminatory and retaliatory actions by the Defendants since complaining of a hostile work environment, workplace violence, and discrimination on account of her age and sex. As a result of the Defendants' ongoing and persistent discriminatory policies and practices, Plaintiff has suffered the following:

36. Plaintiff was subjected to repeated sexual jokes, comments, threats of physical violence, threats of professional retribution, hostile behavior, taunts, racist comments, sexist comments, and demeaning comments by Defendant Gestring. Such treatment repeatedly included, but was not limited to, comments about "splitting a pubic hair", "hump more", "think about it in the shower"; comments that a certain older female manager was a "troll" and going on to state that performance criticism could be ignored because that manager was "jealous" because the younger female subordinate "was so attractive" and the manager "was a troll"; indicating that the managers over 40 could be ignored by the younger female staff; referring to a curling iron as a sex toy; asking a female employee if her daughter at college was enjoying naked; co-ed hot tub parties, referencing his sex life, showing employees pictures of his wife in a bikini; referring to Plaintiff as an "annoying person"; referring to employees over the age of 40 as "stupid" or "dumb"; shouting; repeatedly referring to an employee as a well-known convicted sex offender (Jared Fogle); telling a female employee that her husband was going to knock

her teeth out, publicly shaming employees in front of subordinates; hanging a photo of convicted sex offender Bill Cosby in his office; threatening to throw employees out the 8<sup>th</sup> floor window; calling the Plaintiff into his office after all of the other staff had left for the day, with the light dimmed, and proceeding to yell and threaten Plaintiff by stating “I could hurt you right now if I wanted to”; Plaintiff was instructed to make false accusations of sexual harassment against another employee who was over the age of 40 indicating that it was “a way to get him fired”; derogatory comments about Asian employees; referring to Plaintiff as “old girl” and younger female employees as “young girl”; pressure and demands that Plaintiff issue false positive performance evaluations for a younger female subordinate; comments about younger female employees wearing pants with “juicy” on the rear-end; demand to inspect Plaintiff’s personal cell-phone while not making similar requests of other employees; and overall instituting a retention and termination policy that discriminatorily hires and promotes young females while denigrating older employees and males.

37. Plaintiff rebuffed Defendant Gestring’s repeated sexually explicit and inappropriate comments. Plaintiff reported Defendant Gestring’s inappropriate conduct to management personnel whom included Defendants Davis and Bonacquist.

38. Upon information and belief, Defendant Davis and/or Defendant Bonacquist reported Plaintiff’s complaints to Defendant Green.

39. No action was taken by Defendants Davis, Bonacquist or Green to remedy Defendant Gestring’s conduct.



40. Defendant Gestring discriminated and retaliated against Plaintiff by reassigning her to tasks that were performed by her subordinates, issuing a false negative performance evaluation and ridiculed Plaintiff requiring Plaintiff's subordinates to review her work.

41. Defendant Gestring assigned Plaintiff clerical work that she had not performed prior to confronting Defendant Gestring, stripping her of managerial duties. Defendant Gestring further retaliated against Plaintiff by then issuing a negative performance evaluation of her reflecting on her supervision and managerial skills during a period when Plaintiff had not had supervision and managerial duties.

42. Following one instance where Plaintiff was called into Defendant Gestring's office after all other staff had left for the day, where he had the lights dimmed and proceeded to yell at Plaintiff stating that he could hurt her if he wanted, Plaintiff reported the incident, as well as Defendant Gestring's request that Plaintiff file a false sexual harassment complaint against another employee, to Defendant Davis as DCJS's Director of Human Resources.

43. Upon information and belief, little or no investigation of Plaintiff's complaint was conducted.

44. Approximately two to three weeks after her report, during which time Plaintiff did not hear back from DCJS management, Plaintiff was told in a meeting with Defendants Davis and Bonacquist that she was not to speak of the incident again and was expected to continue "to act in a professional manner".

45. Defendant Davis was present at a second incident when Defendant Gestring threatened to throw Plaintiff and another employee out of an 8<sup>th</sup> floor window. In response, Defendant Davis chuckled at the remark and took no action to reprimand Defendant Gestring.

46. In May and June 2017, Plaintiff testified before members of the Inspector General's Office about the pervasive hostile, discriminatory, and retaliatory atmosphere in DCJS Office of Forensic Services. Plaintiff's testimony included but was not limited to the incidents described above and relayed to the Office of the Inspector General that while incidents had been reported to DCJS Director of Human Resources no actions have been taken to remedy the misconduct committed by Defendant Gestring.

47. Plaintiff requested that her testimony to the Office of the Inspector General not be made public or disclosed to any individual within DCJS for fear of retaliation.

48. In July 2017, Defendant Gestring began to pressure Plaintiff and demand that Plaintiff make false statements in a performance evaluation of a younger favored female employee to which Plaintiff supervised.

49. Plaintiff refused and was subjected to increasing pressure and retaliatory behavior by Defendant Gestring.

50. Thereafter, on or around August 4, 2017, Plaintiff filed a final complaint with Defendant Davis by completing a Workplace Violence/Bullying Report detailing some of the incidents described herein.

51. DCJS Workplace Violence Prevention Policy and Guidelines require that reports of Workplace Violence/Bullying be reported to union representatives and be followed-up with the reporting employee.

52. Upon information and belief, DCJS did not report to Plaintiff's Union that a Workplace Violence/Bullying Report had been filed against Defendant Gestring.

53. Further, as of the date of this Complaint, no one has contacted the Plaintiff to investigate her Workplace Violence/Bullying Report.

54. Days after she filed the Workplace Violence/Bullying Report, Defendant Gestring issued an unsatisfactory performance evaluation against Plaintiff. Upon information and belief, the unsatisfactory evaluation was in response and retaliation of Plaintiff's filing of the Workplace Violence/Bullying Report.

55. Upon information and belief, Defendant Green and non-party witness John Czajka requested a transcript of Plaintiff's testimony before the Office of the Inspector General.

56. On October 24, 2017, Defendant Green and non-party witness Czajka met with the Inspector General and her Executive Deputy Inspector General to discuss the incidents described herein.

57. Upon information and belief, prior to December 5, 2017, Defendant Green was provided a copy of Plaintiff's testimony before the Office of the Inspector General and/or verbally advised by the Inspector General of the sum and substance of Plaintiff's testimony.

58. On December 5, 2017, Plaintiff was asked to appear for a meeting with Defendant Green, Defendant Davis, and Defendant Bonacquist.

59. At the aforementioned December 5, 2017 meeting, Plaintiff was informed that she was being transferred because she could no longer work with Defendant Gestring.

60. Notably, upon advising Plaintiff of the transfer, Defendant Green asked Plaintiff if she needed a tissue....Plaintiff was not crying nor was she sick at the time.

61. On or before December 6, 2017, the Inspector General issued a report and letter to Defendant Green and non-party witness Czajka detailing all of the incidents described herein and finding that the Office of Forensic Services within DCJS was “rife with incidents of sexual harassment, age discrimination, racism, and threats of retaliation.”

62. Against her wishes, Plaintiff was forced to move to a position that she had no experience or background in performing. Plaintiff worked for over ten years in a job that she enjoyed performing and she was forced to take a position that she is not trained to perform because of her testimony about the systematic discrimination taking place at DCJS. Plaintiff's transfer was tantamount to a demotion in her employment insofar as it results in decreased promotional opportunity and stigma to Plaintiff's professional career.

63. In addition to Plaintiff's transfer, she was forced to move from an executive office to a storage closet. Plaintiff was forced to use the storage closet as her office despite open offices being available. Plaintiff is shunned by her former co-workers and executive staff.

64. Plaintiff was informed by her now-supervisor that he was instructed by Defendant Bonacquist that she was to prepare detailed performance plan for every task she performs. Upon information and belief, Plaintiff's co-workers were not required to prepare performance plans in the level of detail that Plaintiff has been required.

65. After media outlets reported on DCJS' systemic harassment, in March 2018, Defendant Gestring was fired for allegedly making inappropriate remarks some ten months earlier unrelated to Plaintiff's employment.

66. Upon information and belief, the alleged inappropriate remarks were reported to executive staff contemporaneous to being made but no investigation or action was taken against Defendant Gestring at that time.

67. A DCJS spokeswoman stated that the firing wasn't related to this case.

68. Following Defendant Gestring's termination, a meeting was held by Defendant Green at which all Deputy Commissioners were in attendance.

69. Plaintiff has since been told by staff of the Deputy Commissioners which attended the meeting that Defendant Green represented and/or inferred to the Deputy Commissioners that Plaintiff's complaints against Defendant Gestring were unfounded and that she was transferred based on performance concerns.

70. On March 23, 2018, Defendant Green issued an electronic message to all DCJS staff that complaints against Defendant Gestring had been fully and impartially investigated with all decisions made based on the facts. However, no one interviewed any complainant as part of this investigation.

71. The alleged impartial investigation was performed by members of DCJS not an outside individual or agency.

72. The investigation conducted by the Office of the Inspector General and the conclusions raised therefrom were ignored by DCJS.

73. Said e-mail inferred to all DCJS staff that the complaints made by Plaintiff were unfounded.

74. Based on comments made at the meeting held with the Deputy Commissioners and the inferences within the March 23, 2018 e-mail, Plaintiff's reputation among her colleagues has been irreparably damaged.

75. Based on the representations and inferences made by Defendant Green Plaintiff's promotional opportunities and upward advancement in DCJS and other State agencies has been irreparably damaged.

76. Since Defendant Gestring's termination, Plaintiff has requested that she be returned to her position at the Office of Forensic Services. Plaintiff's request was denied.

77. Upon information and belief, Plaintiff's request was denied in retaliation due to her testimony before the Office of the Inspector General and/or complaints to the Defendants of the continued pervasive hostile and discriminatory environment Plaintiff and other employees have been subjected to at DCJS.

78. The Defendants have fostered and continue to foster an atmosphere of discrimination, retaliation, harassment, and a hostile work environment based upon age and gender. Such treatment was and has been known to occur for years and the



Defendants have deliberately, recklessly, and/or negligently participated in such acts and/or failed to cease or discourage such practices.

79. The Defendants subjected the Plaintiff to more restrictive terms of employment and scrutiny and otherwise subjected her to unequal treatment of employment due to her sex and/or age.

80. The Defendants subjected the Plaintiff to more restrictive terms of employment, scrutiny, and otherwise subjected her to unequal treatment of employment due to her complaints of discrimination, retaliation, and workplace violence.

81. Despite knowledge of such practices and treatment, the Defendants have deliberately and/or recklessly failed to correct or cease such practices nor seek elimination of said practices.

82. Since Defendant Gestring was appointed to the position of Director of OFS, Defendants implemented a discriminatory policy and procedure for retaining, promoting, demoting, transferring and terminating employees. Defendants' policy and procedure included discriminating against applicants by changing job qualifications, job responsibilities and job duties in order to hire/promote applicants that were female, young and attractive.

83. In at least once instance, Defendant Gestring altered a position posting to allow for a younger less-qualified female candidate to apply for the position when she would not otherwise be eligible to do so.

84. In turn, older female and male applicants were passed over for jobs and promotions that they were otherwise qualified, and more often, more qualified to perform than those female applicants that were awarded the position.

85. This policy remained in place for several years and was not corrected or changed by DCJS.

86. This policy and procedure was so widespread and pervasive that it impacted office morale and resulted in significant turnover.

87. Due to this policy, over half of the workforce over the age of 40 employed by the DCJS Office of Forensic Services was forced into retirement or to transfer out of OFS.

88. Defendants' unlawful employment practices described in this Complaint involve similar acts of discrimination and hostility that took place over several years. At times, the unlawful acts would take place on a daily basis and with such frequency that the culture of the office was molded around these discriminatory practices.

89. Whenever Plaintiff reported these unlawful acts, Defendants either ignored Plaintiff's reports, threatened Plaintiff with retaliation, or outright retaliated against Plaintiff.

90. The Defendants have encouraged, approved, continued and expanded, concealed and participated in such perpetuation of said hostility and illegal and unconstitutional practices to the detriment and injury of the Plaintiff.

91. By acting as described above, the Defendants acted with malice or with reckless disregard for the Plaintiff's rights. Plaintiff was caused to suffer harm, including

but not limited to, anxiety, embarrassment, humiliation, degradation, stress, harm to reputation and good name, anger, fear, and nervousness. Such acts by the Defendants have injured the Plaintiff and subjected her to extreme emotional harm and injury for which she is entitled to compensation therefore.

**AS AND FOR THE FIRST CAUSE OF ACTION PURSUANT TO TITLE VII  
(HOSTILE WORK ENVIRONMENT)**

92. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 89 above.

93. The hostile acts described above are objectively severe and pervasive such that a reasonable person would find them hostile.

94. Plaintiff subjectively perceived the above mentioned acts in that they were severe, pervasive, hostile and discriminatory.

95. Plaintiff is a member of a protected class.

96. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under Title VII and that Plaintiff was harassed and subjected to a hostile work environment.

97. As aforementioned, Plaintiff has sustained damages by reason of the Defendants' wrongful actions and omissions.

**AS AND FOR THE SECOND CAUSE OF ACTION PURSUANT  
TO THE NYS HUMAN RIGHTS LAW  
(HOSTILE WORK ENVIRONMENT)**

98. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 95 above.

99. Defendant Green, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer” under the Human Rights Law.

100. Alternatively, Defendant Green is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

101. Defendant Davis, due to her power to do more than carry out personnel decisions made by others in the course of her employment, is considered an “employer” under the Human Rights Law.

102. Alternatively, Defendant Davis is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, her discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

103. Defendant Gestring, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer” under the Human Rights Law.

104. Alternatively, Defendant Gestring is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

105. Defendant Bonacquist, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer” under the Human Rights Law.

106. Alternatively, Defendant Bonacquist is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

107. Defendants John Doe and Jane Roe, due to their power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer” under the Human Rights Law.

108. Alternatively, Defendants John Doe and Jane Roe are an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

109. The hostile acts described above are objectively severe and pervasive such that a reasonable person would find them hostile.

110. Plaintiff subjectively perceived the above mentioned acts in that they were severe, pervasive, hostile and discriminatory.

111. Plaintiff is a member of a protected class.

112. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under the Human Rights Law of the State of New York and that Plaintiff was harassed and subjected to a hostile work environment.

113. As aforementioned, Plaintiff has sustained damages by reason of the Defendants' wrongful actions and omissions.

**AS AND FOR THE THIRD CAUSE OF ACTION PURSUANT TO TITLE VII  
(DISPARATE TREATMENT)**

114. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 111 above.

115. At all times relevant, Plaintiff belonged to a protected class.

116. At all times relevant, Plaintiff was qualified for her position and met all legitimate expectations of her employer.

117. By engaging in the foregoing conduct, Defendants took an adverse employment action against Plaintiff under circumstances giving rise to an inference of discriminatory intent.

118. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under Title VII and that Plaintiff was treated in a disparate manner.

119. As aforementioned, Plaintiff has sustained damages by reason of the Defendants' wrongful actions and omissions.

**AS AND FOR THE FOURTH CAUSE OF ACTION PURSUANT TO TITLE VII  
(DISPARATE IMPACT)**

120. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 117 above.

121. At all times relevant, Plaintiff belonged to a protected class.



122. By engaging in the foregoing conduct, Defendants fostered and implemented a discriminatory policy and practice that has a disproportionately adverse impact against the Plaintiff.

123. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under Title VII that Defendants created an employment practice that has a disproportionately adverse effect on members of a protected class.

124. As aforementioned, Plaintiff has sustained damages by reason of the Defendants' wrongful actions and omissions.

**AS AND FOR THE FIFTH CAUSE OF ACTION PURSUANT TO TITLE VII  
(RETALIATION)**

125. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 122 above.

126. By engaging in the foregoing conduct, Plaintiff opposed an unlawful employment practice committed by the Defendants.

127. In response to Plaintiff's opposition, Defendants retaliated and took an adverse employment action against the Plaintiff.

128. That a causal connection exists between Plaintiff's opposition and Defendants' adverse employment action.

129. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under Title VII and that Plaintiff was retaliated against for opposing the foregoing conduct and discrimination.

130. As aforementioned, Plaintiff has sustained damages by reason of the Defendants' wrongful actions and omissions.

**AS AND FOR THE SIXTH CAUSE OF ACTION PURSUANT  
TO THE NYS HUMAN RIGHTS LAW  
(RETALIATION)**

131. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 128 above.

132. Defendant Green, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an "employer" under the Human Rights Law.

133. Alternatively, Defendant Green is an "aider and abettor" pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

134. Defendant Davis, due to her power to do more than carry out personnel decisions made by others in the course of her employment, is considered an "employer" under the Human Rights Law.

135. Alternatively, Defendant Davis is an "aider and abettor" pursuant to NYS Executive Law §296(6) and, therefore, her discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

136. Defendant Gestring, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an "employer" under the Human Rights Law.

137. Alternatively, Defendant Gestring is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

138. Defendant Bonacquist, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer” under the Human Rights Law.

139. Alternatively, Defendant Bonacquist is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

140. Defendants John Doe and Jane Roe, due to their power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer” under the Human Rights Law.

141. Alternatively, Defendants John Doe and Jane Roe are an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

142. Defendants violated rights guaranteed to Plaintiff under the Human Rights Law in that they subjected or aided and abetted others in retaliating against Plaintiff because of her testimony to the Office of the Inspector General on issues of age discrimination, racism, sexual harassment, and workplace violence.

143. Defendants violated rights guaranteed to Plaintiff under the Human Rights Law in that they subjected or aided and abetted others in retaliating against Plaintiff because of her reported complaints against Defendant Gestring on issues of age discrimination, racism, sexual harassment, and workplace violence.

144. The underlying provision of the New York Human Rights Law here is N.Y. Exec. Law § 296(1)(e), which makes clear that it is unlawful “For any employer...to discharge . . . any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding.”

145. By engaging in the foregoing conduct, Plaintiff opposed an unlawful employment practice committed by the Defendants.

146. In response to Plaintiff’s opposition, Defendants retaliated and took an adverse employment action against the Plaintiff.

147. That a causal connection exists between Plaintiff’s opposition and Defendants’ adverse employment action.

148. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under the Human Rights Law of the State of New York and that Plaintiff was retaliated against for opposing the foregoing conduct and discrimination.

149. As aforementioned, Plaintiff has sustained damages by reason of the Defendants’ wrongful actions and omissions.

**AS AND FOR THE SEVENTH CAUSE OF ACTION PURSUANT TO TITLE VII  
(DISCRIMINATION)**

150. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 147 above.

151. By engaging in the foregoing conduct, Defendants took an adverse employment action against the Plaintiff.

152. The Defendants' actions and adverse employment action were based on, or motivated by Plaintiff's sex.

153. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under Title VII and that Plaintiff suffered an adverse employment action because of her sex.

**AS AND FOR THE EIGHTH CAUSE OF ACTION PURSUANT  
TO THE NYS HUMAN RIGHTS LAW  
(DISCRIMINATION)**

154. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 151 above.

155. By engaging in the foregoing conduct, Defendants took an adverse employment action against the Plaintiff.

156. Defendant Green, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an "employer" under the Human Rights Law.

157. Alternatively, Defendant Green is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

158. Defendant Davis, due to her power to do more than carry out personnel decisions made by others in the course of her employment, is considered an “employer” under the Human Rights Law.

159. Alternatively, Defendant Davis is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, her discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

160. Defendant Gestring, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer” under the Human Rights Law.

161. Alternatively, Defendant Gestring is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

162. Defendant Bonacquist, due to his power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer” under the Human Rights Law.

163. Alternatively, Defendant Bonacquist is an “aider and abettor” pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is



unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

164. Defendants John Doe and Jane Roe, due to their power to do more than carry out personnel decisions made by others in the course of his employment, is considered an “employer“ under the Human Rights Law.

165. Alternatively, Defendants John Doe and Jane Roe are an “aider and abettor“ pursuant to NYS Executive Law §296(6) and, therefore, his discrimination and/or retaliation is unlawful. The employer for purposes of aiding and abetting liability is the New York State DCJS.

166. By engaging in the foregoing conduct, Defendants took an adverse employment action against the Plaintiff in violation of New York State Executive Law §§ 296(1)(a) and 296 3-a(a).

167. The Defendants’ actions and adverse employment action were based on, or motivated by Plaintiff’s gender and/or age.

168. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under the New York State Human Rights Law and that Plaintiff suffered an adverse employment action because of her sex.

**AS AND FOR THE NINTH CAUSE OF ACTION PURSUANT  
TO 42 U.S.C. § 1983 – FOURTEENTH AMENDMENT  
(DISCRIMINATION)**

169. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 166 above.

170. The conduct committed by the Defendants described above was done so while acting under color of law.

171. By engaging in the foregoing conduct, Defendants have violated rights guaranteed to the Plaintiff under the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution and that Plaintiff was subjected to a hostile work environment and discriminated against based on her age and gender.

172. As aforementioned, Plaintiff has sustained damages by reason of the Defendants' wrongful actions and omissions.

**AS AND FOR THE TENTH CAUSE OF ACTION PURSUANT  
TO 42 U.S.C. § 1983 – FOURTEENTH AMENDMENT  
(RETALIATION)**

173. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 170 above.

174. The conduct committed by the Defendants described above was done so while acting under color of law.

175. By engaging in the foregoing conduct, Defendants took an adverse employment action against the Plaintiff because Plaintiff complained of or otherwise opposed discriminatory conduct committed by Defendants.

176. As aforementioned, Plaintiff has sustained damages by reason of the Defendants' wrongful actions and omissions.

**AS AND FOR THE ELEVENTH CAUSE OF ACTION PURSUANT**

**TO 42 U.S.C. § 1983 - FIRST AMENDMENT  
(RETALIATION)**

177. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 174 above.

178. Plaintiff testified before the New York State Office of the Inspector General regarding systemic problems of sexual harassment, age discrimination, gender discrimination, racism, and workplace violence in DCJS, as well as the the refusal by Defendants to respond to her complaints of these issues.

179. In so doing, Plaintiff clearly testified on a matter that is of political, social and societal concern.

180. The public importance of these topics has been highlighted in various forms of State, local and national media.

181. Indeed, New York State Governor Andrew Cuomo, in his 2018 State of the State address, stated that the nation “is taking a long look in the mirror as to how we treat women, and we are disgusted with what we see. And we should be.” And, in December 2017, he responded to a news organization stating, “When you say, ‘It’s state government,’ you do a disservice to women, with all due respect, even though you’re a woman, ‘It’s not government. It’s society. It was Harvey Weinstein in the arts industry. It’s comedians. It’s politicians. It’s chefs, right? It’s systemic.’”

182. In March 2018, the New York State Legislature passed a sexual harassment bill, which is supposed to provide additional protections to victims of harassment.

- (d) Damages for emotional distress, pain and suffering, statutory damages, Medical expenses, and interest;
- (e) Reasonable attorneys' fees and costs pursuant to 42 USC § 1988 and all other applicable laws; and
- (f) Such other and further relief as appears just and proper.

Dated: December 17, 2018

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